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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,300	01/26/2007	Lucio Valent	40434	8183
116 7590 11/19/2009 PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108				
EXAMINER				
CORMIER, DAVID G				
ART UNIT		PAPER NUMBER		
1792				
MAIL DATE		DELIVERY MODE		
11/19/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/579,300

Applicant(s)

VALENT ET AL.

Examiner

DAVID CORMIER

Art Unit

1792

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☒ Claim(s) 2-4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments/Amendments

1. This Office action is responsive to the amendment filed on August 07, 2009.

Claims 1-4 are pending. Claim 4 is new.

2. Claim 1 was rejected as being anticipated under 35 U.S.C. 102(b) over Wasemann (US 4,502,303). Applicant argues that Wasemann does not teach all of the claimed limitations. Applicant's arguments have been fully considered but they are not persuasive. More specifically, Applicant argues that Wasemann does not teach "that said shell (3) is integrally provided in one piece with at least a foldable member (5)" because in Wasemann, "[t]he balance ring 40 is manufactured by molding the body 42 and cap 43 as separate pieces" (col. 5, lines 66-67 of Wasemann). It is the Examiner's position that this limitation is anticipated by Wasemann for multiple reasons. The first reason, which was the position taken in the previous Office action, is that the limitation can be broadly and reasonably construed as meaning that the shell is integrally provided in one piece (with itself), and it also has a foldable member. The second reason is that although the cap 43 and body 42 of the balance ring 40 are made separately, they are eventually made integral by vibration welding them together (col. 6, lines 1-6 of Wasemann).

3. The rejection of Claims 2 and 3 as being unpatentable under 35 U.S.C. 103(a) over Wasemann, made of record in the Office action mailed May 08, 2009, has been withdrawn after reconsideration of the previous rejections.

Allowable Subject Matter

4. Claims 2-4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. The following is a statement of reasons for the indication of allowable subject matter:

- a. the prior art does not provide for, or make obvious, a counterweight according to claim 1, characterized in that said foldable member (5) comprise a cover extending from a peripheral edge (8) of said shell (3) in correspondence to enlarged lower portions (6) thereof said peripheral edge (8) integrally provides pivotal sections (9) adapted to facilitate the rotation of said foldable member (5) around the peripheral edge (8) so that the ballast mass contained in the enlarged lower portion (6) are covered by said foldable member, as in Claim 2; and
- b. the prior art does not provide for, or make obvious, a counterweight according to claim 1, wherein a peripheral edge (8) of said shell (3) integrally provides pivotal sections (9) adapted to facilitate the rotation of the foldable member (5) around the peripheral edge (8), as in Claim 4.

Claim Rejections - 35 USC § 102

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Wasemann (USPN 4,502,303).
8. Wasemann discloses a counterweight, "balance ring," connectable to a washing machine tub (40), comprising an hollow shell, "body," (42) of U-shaped cross-section for containing a concrete ballast mass poured therein (Figure 2; col. 5, lines 1-10), characterized in that said shell is integrally provided in one piece (Figures 2 and 5) with a least a foldable member, "cap," (43; col. 5, lines 1- 4) adapted to close at least a portion of said shell in order to encapsulate said concrete ballast mass (Figure 2). The phrase "foldable member" is being interpreted broadly to encompass a polypropylene "cap" because polypropylene would not be perfectly rigid and could be folded.
9. Also, though Wasemann meets the limitation of having a concrete ballast mass, the phrase "for containing a concrete ballast mass" is not being given patentable weight because it is considered to be intended use of the apparatus.
- 10.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
12. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID CORMIER whose telephone number is (571) 270-7386. The examiner can normally be reached on Monday - Thursday 8:30 - 6:00.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571) 272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Barr/
Supervisory Patent Examiner, Art
Unit 1792

/DGC/
David Cormier
11/18/2009